

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

ROBERT LEO DEVOTO,

Respondent.

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Supreme Court #SC94017

RESPONDENT'S BRIEF

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RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
STATEMENT OF JURISDICTION.....	5
STATEMENT OF FACTS.....	6
I. BACKGROUND AND DISCIPLINARY HISTORY.....	6
COUNTS I, II, III, V, VI, and VII.....	6
COUNTS IV and VIII.....	6
II. RESPONDENT’S EFFORTS TO IMPROVE.....	6
POINT RELIED ON.....	8
ARGUMENT.....	10
CONCLUSION.....	14
CERTIFICATE OF SERVICE.....	15
CERTIFICATION: RULE 84.06(C).....	15

TABLE OF AUTHORITIES

CASES

<i>In re Belz</i> , 258 S.W.3d 38 (Mo. banc2008).....	9
<i>In re Barr</i> , 79 S.W.3d617 (Mo. banc 2009).....	8
<i>In re Wiles</i> , 107 S.W.3d 228 (Mo. banc 2003).....	9
<i>In re Snyder</i> , 35 S.W.3d 380 (Mo. banc 2000)	8
<i>In re Littleton</i> , 719 S.W.2d 772 (Mo. banc 1986).....	8-9
<i>In re Haggarty</i> , 661 S.W.2d 810 (Mo. banc 1983).....	8
<i>In re Schunk</i> , 847 S.W.2d 789 (Mo. banc 1993).....	8
<i>In re Phillips</i> , 767 S.W.2d 16 (Mo. banc 1989)	9
<i>In re Forge</i> , 747 S.W.2d 141, (Mo banc 1988).....	9
<i>In re Donahoe</i> , 98 S.W. 871 (Mo. banc 2003).....	9
<i>In Re Lavin</i> , 788 S.W.2d 282 (Mo. banc 1990).....	9
<i>In re Reza</i> , 743 S.W.2d 227 (Mo. banc 1988)	11

OTHER AUTHORITIES

ABA Standards for Imposing Lawyer Sanctions (1992)

RULES

Rule 4.1.15

Rule 4.1.15(c)

Rule 4.1.15(d)

Rule 4.1.15(e)

Rule 4.1.15(i)

Rule 4.1.3

Rule 4.1.5

Rule 4.1.8(e)

Rule 4.5.5(c)

Rule 4.8.1(c)

Rule 4.8.4(c)

Rule 4.8.4(d)

Rule 5.225

STATUTES

820 ILCS 308 16(a).....12

STATEMENT OF JURISDICTION

Respondent concurs in Informant's Jurisdictional Statement pursuant to Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo.2000.

STATEMENT OF FACTS

1. Background and Disciplinary History

Respondent concurs in the Statement of Facts and Background for Informant, noting only that the record demonstrates Respondent's acute episode of depression in the early 2000's, for which he was successfully treated.

Count I, Count II, Count III, Count V, Count VI, COUNT VII

Respondent concurs with the Informant's Statement of Facts with respect to the above Counts.

Count IV

Respondent does not concur in Informant's Count IV. Appended hereto as a supplement to the Legal File is a copy of the Illinois Industrial Commission's approved contingency contract form which is required for all Illinois compensation cases wherein counsel is retained for a claimant.

Count VIII

Respondent concurs in Informant's Statement of Facts, but notes he did, in fact, supply the records requested and consented to the Disciplinary Counsel's subpoena.

App. 36-9.

II. Respondent's Efforts to Improve

Respondent concurs in Informant's Statement of Facts.

Respondent, however, notes Respondent always considered sums advanced by clients in anticipation of future expenses, primarily for consulting and retaining experts, were "client money" and appropriately placed in Respondent's trust account. Respondent has ceased such practice (see below.)

POINT RELIED ON

**RESPONDENT’S LICENSE SHOULD BE SUSPENDED WITH THE
SUSPENSION STAYED AND HE SHOULD BE PLACED ON
PROBATION IN ORDER TO IMPROVE HIS PRACTICE AND
PROTECT HIS FUTURE CLIENTS.**

<i>In re Belz</i> , 258 S.W.3d 38 (Mo. banc2008).....	9
<i>In re Barr</i> , 79 S.W.3d 617 (Mo. banc 2009).....	8
<i>In re Wiles</i> , 107 S.W.3d 228 (Mo. banc 2003).....	9
<i>In re Snyder</i> , 35 S.W.3d 380 (Mo. banc 2000)	8
<i>In re Littleton</i> , 719 S.W.2d 772 (Mo. banc 1986).....	8-9
<i>In re Haggarty</i> , 661 S.W.2d 810 (Mo. banc 1983).....	8
<i>In re Schunk</i> , 847 S.W.2d 789 Mo. banc 1993).....	8
<i>In re Phillips</i> , 767 S.W.2d 16 (Mo. banc 1989)	9
<i>In re Forge</i> , 747 S.W.2d 141, (Mo. banc 1988).....	9
<i>In re Donahoe</i> , 98 S.W. 871 (Mo. banc 2003).....	9
<i>In Re Lavin</i> , 788 S.W.2d 282 (Mo. banc 1990).....	9
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Rule 4.1.5

Rule 4.1.8(e)

Rule 4.5.5(c)

Rule 4.8.1(c)

Rule 4.8.4(c)

Rule 4.8.4(d)

Rule 5.225

Rule 5.225

STATUTES

820 ILCS 30516(a) Attorneys' fees.....12

ARGUMENT

RESPONDENT’S LICENSE SHOULD BE SUSPENDED WITH THE SUSPENSION STAYED AND HE SHOULD BE PLACED ON PROBATION IN ORDER TO IMPROVE HIS PRACTICE AND PROTECT HIS FUTURE CLIENTS.

Respondent concurs in the recommendation of the Disciplinary Commission and its Committee, The Disciplinary Counsel and is, none-the-less fully cognizant of the fact that the recommendation is not binding on this Court. *In re Barr*, 79 S.W.3d 617, 620 (Mo. banc 1993). “In disciplinary proceedings the Disciplinary Hearing Panel’s recommendations as to the appropriate measure of discipline is merely advisory. *In re Snyder*, 35 S.W.3d 380, 382 (Mo. banc 2000). Although this Court gives considerable weight to the Panel’s suggestion, it must independently review the record and determine the punishment necessary to “protect the public” and maintain the integrity of the legal profession.’ *In re Littleton*, 719 S.W.2d 772, 775-7 (Mo. banc 1986). These two objectives are paramount because as members of a self-regulating profession, we must be ever mindful, that at minimum, the public should be able to rely upon “an attorney’s honesty and devotion to his clients’ interests.” *In re Haggarty*, 661 S.W.2d 810, 813 (Mo. banc 1983.) Disbarment is reserved only for cases of severe misconduct where it is clear an attorney is not fit to continue in the legal profession. *In re Schunk*, 847 S.W.2d 789, 781 (Mo. banc 1993).

Respondent freely, fully and regretfully admits his record keeping was woefully inadequate to non-existent with respect to the client trust account and acknowledges that the deficiency represents a potential threat to client's interest and property entrusted to him and ultimately a threat to the integrity of the law profession. Henceforth, Respondent will -- when clients occasionally advance sums towards anticipated cost of litigation -- require client's written consent. *In re Phillips*, 767 S.W.2d 16, 18 (Mo. banc 1989). *In re Forge*, 747 S.W.2d 141, 145-6 (Mo. banc 1988). *In re Littleton* 719 S.W.2d 772, 777 (Mo. banc 1986). *In re Donahoe*, 98 S.W.3d 871, 874 (Mo. banc 2003).

Respondent personally notes that no harm came to the client's interest or property, and while funds were co-mingled, there is no evidence that there was an appropriation to respondent's personal use of client funds. The written record supplied by Respondent demonstrates that a full accounting of all of the funds received was made to every client. This, of course, distinguishes *In re Belz*, 258 S.W.3d 38, 41 (Mo. banc 2008) even though respondent therein voluntarily returned client money without prompting from the Office of the Disciplinary Counsel. Respondent concurs, under the totality of the circumstances, in Respondent's misapprehension as to the proper treatment of sums advanced by clients to fund partially anticipated litigation expense, and that as a result, he inappropriately co-mingled client funds. Respondent also understands that lack of harm to clients however does not excuse professional misconduct. *In Re Lavin*, 788 S.W.2d 282, 285 (Mo. banc 1990). Respondent suggests *In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003) is appropriate guidance for this Court to accept the recommendation of the Disciplinary Counsel.

Respondent further understands it is his duty to resolve third party claims against any recoveries as expeditiously as possible and that written client authority to negotiate or settle any such liens is necessary.

Respondent further understands that meticulous record keeping not only to the client with respect to settlement statements showing costs, disbursements, collections, etc., but also within the trust account itself and that all attorney's fees not subject to any type of third party claim must be promptly withdrawn from the account.

Respondent deeply regrets this further action by the Disciplinary Counsel and has striven to improve his practice.

Alleged Violation in Count VI

Respondent is fully aware that he allocated to this alleged violation, but respectfully points out that no Illinois worker's compensation claim may be prosecuted on behalf of any employee or dependent without a preapproved form contingency contract. The settlement agreement, as in Missouri, must also be approved by either the Arbitrator (administrative law judge) or the Industrial Commission. See Respondent's supplemental Legal File. All the other clients who have some aspect of their representation subject to a contingency fee did in fact have contracts for legal services and were provided full accountings of the recovery, costs and fees. See 820 ILCS 305 16(a) in Respondent's Supplemental Legal File.

Alleged Violations in Count VIII

Respondent believes he did respond to the Disciplinary Counsel's Office's inquiries by supplying bank records, settlement statements signed by the clients and an account of his activities, even if not with the greatest celerity. Respondent fully understands that his duty to co-operate fully with and as expeditiously as possible to any inquiry from the Office of Disciplinary Counsel and endeavored to do so. Respondent understands and appreciates that the Bar is a de-facto co-owner of any Attorney's Trust Account.

Respondent is also fully aware of the fact that discipline is a cumulative affair, and accepts responsibility for his past failures. *In Re Reza*, 743 S.W.2d 227, 230 (Mo. banc 1988).

CONCLUSION

Respondent believes he can continue to make a significant contribution to the general public, the Bar and our system of justice. It is therefore respectfully suggested to this Court that the Court accept the Disciplinary Counsel's recommendation and stipulation as to discipline.

Respectfully submitted,

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RESPONDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 2014, the Respondent's Brief was sent via the Missouri Supreme Court e-filing system to Informant's counsel:

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